No. 478.
Motion to advance

FILED
DEC 9 1901
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Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Dec. 9, 1901.

No. 478.

IN THE MATTER OF THE APPLICATION OF

FOK YOUNG YO,

FOR A WRIT OF HABEAS CORPUS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.

MAXWELL EVARTS,
Counsel for Appellant Fok Young Yo.

C. G. Bunnyard, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM 1901.

No. 478.

IN THE MATTER
OF
The Application of Fok Young Yo, for a Writ of *Habeas Corpus*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Motion to Advance.

The appellant, Fok Young Yo, is a subject and citizen of China, and a resident of San José de Guatemala, which is the principal sea port in the Republic of Guatemala, Central America. On the 24th day of August, 1901, he purchased at Hong Kong, China, his passage from there to San José de Guatemala, paying therefor the sum of one hundred and eighty-three (Mexican) dollars, and received a ticket at Hong Kong, from the agent of the Toyo Kisen Kaisha Steamship Company, for passage on the steamship "Nippon Maru," to the port of San Francisco, and an order upon the San Francisco agent of said Steamship Company for a steerage ticket from San Francisco to San José de Guatemala.

Upon the arrival of the steamship at San Francisco, the appellant was on September 19, 1901, examined by an Inspector of the Chinese Bureau and his baggage and private papers were opened and his person was searched, and he was denied the privilege of transit across the territory of the United States in pursuance of the privilege given to him by the last clause of Article Three of the Treaty of March 17, 1894, between the United States and China, (26 U. S. Statutes, p. 1210) and was ordered to be deported to China.

The appellant made no application to enter the United States, or to pass in transit through the territory thereof in any proper sense of the term, but merely intended to leave the ship upon which he arrived at San Francisco, to cross a bonded dock and enter another ship which would carry him to his destination at San José de Guatemala, which is over a thousand miles from the Southern boundary of the United States. In other words, he merely touched at San Francisco, en route for Guatemala.

An application was made by the appellant for a writ of *habeas corpus* and upon the return of the writ, it was dismissed upon the ground that the decision of the Collector ordering him to be deported to China was final and conclusive, so far as the Court was concerned, and that the only remedy which the appellant had was by appeal to the Secretary of the Treasury. From the order of the Court dismissing the writ of *habeas corpus*, the appeal in this case is taken.

The said Fok Young Yo, by his attorney, now moves this Court to advance this cause upon the docket, and to set it down for argument upon such day during the present term, as may be convenient to the Court, for the following reasons.

I. The appellant is and has been since the 19th day of September, 1901, detained and imprisoned in a building on the dock of the Pacific Mail Steamship Company, at the Port of San Francisco, State of

California, and must so remain until this case is heard by this Court.

II. There are now imprisoned in the same building with the appellant, awaiting the decision of this case, more than one hundred Chinamen, who have sought to cross the territory of the United States en route to a foreign country, in pursuance of the privilege granted them by Article Three of the Treaty between the the United States and China, of March 17, 1894.

III. The case presented here is one, not only of great interest to the individual concerned, but raises questions of importance to the Government of the United States, involving the construction of the Treaty between the United States and China of March 17, 1894, and of the Act of Congress entitled "An Act to prohibit the coming of Chinese Laborers to the United States," approved September 13, 1888 (25 U. S. Stat. p. 476).

Notice of this motion has been served on the Attorney-General, and proof thereof filed with the Clerk of this Court.

Dated, November 29, 1901.

MAXWELL EVARTS,
Counsel for the appellant Fok Young Yo.

No. 478.

DEC 2 1901

Mem. of Evarts for Appt.

Supreme Court of the United States.

OCTOBER TERM, 1901.

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IN THE MATTER OF THE APPLICATION OF

FOK YOUNG YO,

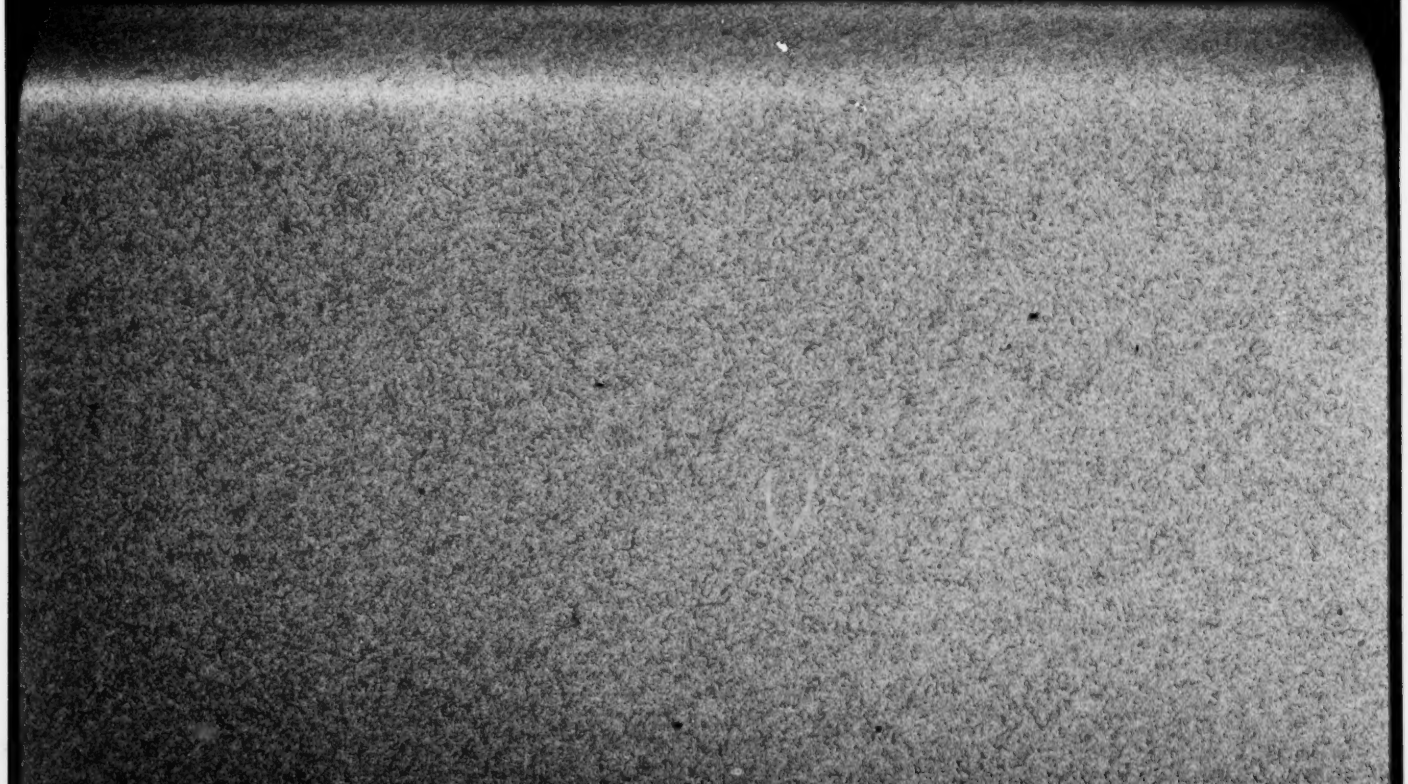
FOR A WRIT OF HABEAS CORPUS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MEMORANDUM OF APPELLANT ON MOTION TO ADVANCE.

MAXWELL EVARTS,
Counsel for Appellant Fok Young Yo.

C. G. Burgoyne, Walker and Centre Streets, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1901.

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IN THE MATTER

OF

The Application of FOK YOUNG YO, for a Writ of *Habeas Corpus*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Memorandum of Appellant on Motion to Advance.

The appellant in this case has never sought to enter the United States, nor has he asked the privilege of transit across the territory of the United States, except in the most limited sense. The right to leave the ship upon which he arrived at San Francisco, to cross a bonded dock and to take another ship which would carry him to his destination in Guatemala, has been denied to him, and no reason has been given for such denial.

He is now imprisoned and has been since the 19th of September, 1901. He is guilty of no crime. He

has done nothing wrong. He has simply followed the ordinary route of travel between Hong Kong and Guatemala, a country more than one thousand miles from the United States, and the Collector of the port of San Francisco has refused him this privilege, has remanded him to the country from whence he came, and has undertaken to compel him to go to Guatemala by some steamer which will take him there direct from Hong Kong without touching at a port of the United States. We know of no steamship line which would enable him to do this. If this case should not be advanced for hearing this term, it would mean, either that the appellant would be confined for at least a year, or else that he would have to abandon his case and give up his journey to San José de Guatemala, which is his residence and commercial domicile.

This would seem to be a good and sufficient ground for an early hearing of this case, aside from the other reasons stated in the printed papers submitted on the motion to advance.

The points involved in this case have never been presented to and decided by this Court and are briefly as follows :

I. It is claimed by the appellant that Article III. of the treaty between the United States and China gives to Chinese laborers the right to cross the territory of the United States, in the course of their journeys to or from other countries, and that said right is only subject to such regulations as the Government of the United States may deem necessary to prevent the privilege of transit from being abused. That is to say, the Government of the United States has under the treaty the power to determine the mode and mannner and the conditions under which the Chinese laborer shall make a transit of the country, but that the power to regulate such transit, the right to determine the conditions under which it shall be enjoyed, does not include the power to prevent it. The clause of the treaty referred to is as follows :

"It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent said privilege of transit from being abused."

II. We further insist that, if we are wrong in this construction of the treaty, the privilege of transit certainly cannot be arbitrarily denied, and that the denial of such privilege must be based upon some reasonable ground for believing that the privilege of transit in each particular case will be abused.

III. The appellant also claims that under the clause of the treaty, which has just been quoted, it is necessary that Congress should pass some act authorizing and directing the Secretary of the Treasury to make such regulations as he may deem necessary to prevent the privilege of transit from being abused.

No such act has ever been passed, and any attempted regulation by the Secretary of the Treasury is, therefore, null and void. In other words, there has been no regulation by the government in pursuance of the provisions of this treaty.

IV. The appellant has complied with every attempted regulation of the Secretary of the Treasury in regard to the transit of Chinamen across the territory of the United States.

V. The Court below erred in supposing that the Act of September 13, 1888, entitled "An Act to prohibit the coming of Chinese laborers to the United States" (25 U. S. Stat., p. 476), has any application to this case. That act was made dependent upon the ratification of a then pending treaty between the United States and China. Said treaty was never ratified. The act, therefore, or at least such part thereof as was made dependent upon the ratification of such treaty, never went into effect.

VI. There is no law of the United States making final and conclusive the decision of the Collector of the Port of San Francisco as to the right of a Chinaman to enjoy the privilege of transit across the territory of the United States in the course of his journey to another country, and there is no law of the United States and no decision of this Court which holds that a determination of a Collector of Customs refusing to a Chinaman such right of transit cannot be reviewed and reversed by the Courts upon an application for a writ of *habeas corpus*.

I am authorized by the Attorney-General to say that he has no objection to the advancement of this case for hearing at as early a date as is possible and convenient to this Court, and in view of the importance of this case and the long confinement of the appellant if the case is not heard at this term, I respectfully ask the Court to advance the case for argument.

A copy of this memorandum has been sent to the Attorney-General.

MAXWELL EVARTS,
Counsel for Appellant.